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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,392	04/01/2004	Vladimir Kutov	1412-2	7586

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EXAMINER

HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

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06/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/815,392

Applicant(s)

KUTOV, VLADIMIR

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) 9-15 and 30-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 16-27 is/are rejected.
- 7) ☒ Claim(s) 28 and 29 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/1/04 & 3/1/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Election/Restrictions***

1. Applicant's election of Group I, Species B in the reply filed on April 5, 2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 9-15 and 30-44 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 5, 2007.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the base portion of the lower tube (claim 24); and the knot used to secure the hook bolt (claim 28) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must

be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Claim 29 is objected to because of the following informalities: in line 2 the recitation "in" presumably should be deleted; in line 3, the recitation "in" presumably should be replaced with --at--; and in line 3, the recitation "for attachment to said" presumably should be deleted. Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by *Tominaga* (US Pat. 4,521,016). *Tominaga* discloses an apparatus comprising a support structure 12 having a first point of attachment 29 or 41 and a second point of attachment 29 or 41 spaced away from

the first point of attachment. At least one resilient band 28 having a first end attached to the first point of attachment 29 or 41 and a second end attached to the second point of attachment 29 or 41; and a target 11 attached to the resilient band 28, wherein the target 11 is suspended from the resilient band 28 by a tether 42. The target 11 is a tennis ball and is considered to read upon the limitation of being made of soft material.

The support structure includes at least two vertical posts 12 adjustable in height (see col. 2, lines 27-31). At least one support rod 62,68 adjustable in length can be positioned between the at least two vertical support with at least one point of attachment for the at least one resilient band to attach to the vertical posts. The points of attachment 29 and 41 can be located at different heights along the vertical posts so that multiple targets can be hit at different levels.

7. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by *Aragona* (US Pat. 4,364,558). *Aragona*'558 discloses a training apparatus comprising a target 2 attached to and suspended from at least one resilient band 8. The at least one resilient band 2 has first and second ends that are attached to first and second spaced points of attachment 12. The first and second points of attachment may be supported in a door frame. The door frame is considered to read upon the limitation of at least one wall of a room, a first wall, and a second adjacent or opposite wall (claim 16). The target is made of thin plastic material and is considered to read upon the limitation of a soft material (claim 18).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Tominaga* (US Pat. 4,521,016) in view of *Robinson* (US Pat. 3,521,885). *Tominaga* has been discussed above, and such discussion is incorporated herein. *Tominaga* discloses the invention as claimed except for the target further comprising a flexible pocket encasing the tennis ball (claim 3); and the flexible pocket made of rope netting sized to completely surround the tennis ball (claim 4).

Robinson discloses a means for securing a tennis ball 20 to a tether 19. The tennis ball 20 is encased in a flexible pocket 21 made of rope netting material 21 sized to completely surround the tennis ball 20, the pocket 21 being fastened to the tether 19.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the tennis ball of *Tominaga* with a flexible pocket of rope netting material, since *Robinson* teaches that this pocket can be used to secure a tennis ball to a tether.

10. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Tominaga* (US Pat. 4,521,016) in view of *Robinson* (US Pat. 3,521,885) as applied to claim 4 above, and further in view of *Soligny, Sr.* (US Pat. 4,861,020). *Tominaga* in view of *Robinson* discloses the invention as claimed except for the resilient band being surgical tubing.

Soligny, Sr. discloses the equivalence of surgical tubing, bungee cords, and elastic cords for their use in providing a resilient resistance source (col. 1, lines 44-46). It would have been obvious to one having ordinary skill in the art at the time the invention was made that the elastic cord of *Tominaga* in view of *Robinson* comprise surgical tubing, since *Soligny, Sr.* discloses the use of surgical tubing as an elastic cord to provide a resilient resistance source.

11. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Aragona* (US Pat. 4,364,558) in view of *Aragona* (US Pat. 4,465,273) and *Wilkins* (US Pat. 5,624,360). *Aragona* '558 has been discussed above, and such discussion is incorporated herein. *Aragona* '558 discloses the invention as claimed except for the support structure further comprising a first post adjustable in height attached to the first wall, a second post adjustable in height attached to the second wall, at least one point of attachment for the at least one resilient band attached to the first and second vertical posts, and at least one bracket used one each of the first and second posts for securing the posts to the walls (claim 16); the bracket comprising a U-shaped portion having a first end and a second end, and tabs extending substantially perpendicular from the first and second end having both holes contained therein, and a self-tapping or lag bolt used to secure the bracket to the wall when the first or second post is placed in the U-shaped portion (claim 17); the at least one attachment point on the vertical posts are positioned along a longitudinal axis of the posts at different heights so that when the at least one resilient bands are attached, multiple targets can be hit at different levels (claim 23); and an attachment device for securing the resilient band to the post (claim 27).

Aragona '273 discloses a training device analogous to the training device of *Aragona* '558, wherein the support structure is mounted to a post 11 secured to the wall 13 of a door frame. The target is positionable at selected heights.

Wilkins discloses a training device comprising resilient resistance sources 120 selectively positionable in height. One end of the resilient resistance is secured to an attachment point on a vertical post 128, the vertical post being adjustably positioned on a wall or door and secured to the wall by brackets 122 having a U-shaped portion and first and second tabs. Attachment devices 124 provide a means for securing an end of the resilient training device at a selected vertical height. Providing the tabs with holes to receive a self-tapping or lag bolt is a common method for securing a bracket to a vertical surface and the Examiner takes Official notice that such construction techniques would have been obvious to one having ordinary skill in the art.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the walls of the door frame of *Aragona* '558 with the vertical posts and brackets of *Wilkins*, since *Aragona* '273 teaches locating a training device at different heights (col. 2, lines 47-51).

12. Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Aragona* (US Pat. 4,364,558) in view of *Aragona* (US Pat. 4,465,273) and *Wilkins* (US Pat. 5,624,360) as applied to claim 18 above, and further in view of *Olszewski* (US Pat. 6,740,012 B1) and *Iams et al.* (US Pat. 5,813,956). *Aragona* '558 in view of *Aragona* '273 and *Wilkins* discloses the invention as claimed except for the target comprising a spherically shaped object encased in a flexible pocket suspended from the resilient band (claim 19); the flexible pocket made of

flexible rope netting sized to completely surround the spherically shaped object (claim 20); and the spherically shaped object being a tennis ball (claim 21).

Olszewski discloses a training device wherein the punching target is a tennis ball 32 suspended by a tether 16. *Robinson* discloses securing a tennis ball 20 to a tether 19 by encasing the tennis ball in a flexible pocket 21 made of rope netting material 21.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the training device of *Aragona* '558 in view of *Aragona* '273 and *Wilkins* with a tethered tennis ball target, since *Olszewski* discloses the use of a tethered tennis ball as a punching target more challenging to strike and to secure the tennis ball by encasing the tennis ball in a flexible pocket of rope netting material, since *Robinson* discloses such a method for securing a tennis ball to a tether.

13. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Aragona* (US Pat. 4,364,558) in view of *Aragona* (US Pat. 4,465,273), *Wilkins* (US Pat. 5,624,360), *Olszewski* (US Pat. 6,740,012 B1) and *Robinson* (US Pat. 3,521,885) as applied to claim 21 above, and further in view of *Iams et al.* (US Pat. 5,813,956). *Aragona* '558 in view of *Aragona* '273, *Wilkins*, *Olszewski* and *Robinson* discloses the invention as claimed except for the resilient band being surgical tubing (claim 22).

Iams et al. discloses a training device wherein resilient members may comprise surgical tubing (col. 1, lines 46-48).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the resilient band of *Aragona* '558 in view of *Aragona* '273,

Wilkins, Olzewski and Robinson as surgical tubing, since *Iams et al.* discloses that resilient members may comprise surgical tubing.

14. Claims 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Aragona* (US Pat. 4,364,558) in view of *Aragona* (US Pat. 4,465,273), *Wilkins* (US Pat. 5,624,360), *Olzewski* (US Pat. 6,740,012 B1) and *Robinson* (US Pat. 3,521,885) and *Iams et al.* (US Pat. 5,813,956) as applied to claim 23 above, and further in view of *Schwendemann* (US Pat. 6,530,867). *Aragona*'558 in view of *Aragona*'273, *Wilkins, Olzewski, Robinson* and *Iams et al.* discloses the invention as claimed except for the at least one post comprising a lower tube having a first inner dimension and a base portion attached to a first end, an upper tube having a second inner dimension identical to the first inner dimension, an intermediate tube having an outer dimension smaller than the first inner dimension and the second inner dimension, the intermediate tube positioned inside the lower tube at a second end and the upper tube slidably moves on the intermediate tube to a higher or lower height, and a locking device selectively actuatable for holding the upper tube to the intermediate tube after it is positioned (claim 24).

Schwendemann discloses constructing vertical tubes for forming a support structure of a training device. The vertical support structure 22 comprises upper and lower tubes 38,36 joined by an intermediate tube 40 that slidably fits within and between the ends of the upper and lower tubes. A plurality of apertures 44,46 are provided in the ends of the upper, lower and intermediate tubes to selectively receive locking devices 42.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the vertical support posts of *Aragona*'558 in view of

Aragona '273, Wilkins, Olzewski, Robinson and Iams et al. with the upper, lower and intermediate tubular construction of *Schwendemann*, since such construction techniques are common and known in the exercise art to provide a support structure.

Allowable Subject Matter

15. Claims 28 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

16. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not disclose or make obvious an attachment device being a hook bolt selectively removable from the at least one post by extending the hook bolt through an aperture in the side wall of the post and securing the hook bolt using a knot.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Moran (US Pat. 1,538,203), *Schindler* (US Pat. 1,851,649), *Pretorius* (US Pat. 3,924,855), *Aragona* (US Pat. 4,512,569), *Coldren* (US Pat. 7,033,290 B1), *Rest* (DE 2,535,405 A), *Belousov* RU 2,190,444 C1), *Belousov* (RU 2,206,358 C1) and *Myhill* (WO 02/36214 A2) disclose training devices having structure relevant to the claimed invention.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Victor K. Hwang
June 11, 2007

JEROME DONNELLY
PRIMARY EXAMINER

